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I, certify that a copy of the foregoing  
document to which this certificate is  
attached was delivered to the attorneys  
of record of plaintiff, defendant, on  
the 18 day of September, 2001  
BY UNITED STATES ATTORNEY  
BY [Signature]

JUDGE LASNIK

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CR 00-00482 #00000125

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
JAMES HOUSTON ANDERSON, ET AL.,  
  
Defendants.

Nº CR00-482L

GOVERNMENT'S OPPOSITION TO  
DEFENDANT ANDERSON'S MOTION  
TO STRIKE SUPPLEMENTAL  
RESPONSE

The United States respectfully responds to defendant Anderson's Motion to Strike  
Government's Supplemental Response, as follows:

Defendant asserts that the Government's Supplemental Response to his Hyde Amendment  
motion for attorney's fees and other relief was improperly filed under the Federal and Local  
Rules of Civil Procedure, and urges the Court to strike the pleading and disregard the  
government's factual and legal positions stated therein. We oppose this request and believe that  
defendant's reliance on the civil rules to support his request is misplaced. This is a motion  
brought on behalf of a defendant in a criminal case. As such, we believe it is subject to  
criminal, rather than civil rules of procedure. Defendant's motion is the first and only Hyde  
Amendment claim ever brought in this District. No specific procedures for adjudicating such a  
claim have been established either in this District, or nationally. The Hyde Amendment itself  
does not address the nature of the motions or responses to be filed nor the procedural rules and  
time table governing the litigating of such motions, except to authorize the Court's consideration  
of ex parte, in camera evidence, and to incorporate the procedures for awards under 28 U.S.C. §

1 2412, the Equal Access to Justice Act (EAJA). The EAJA, in turn, does not deal with pleadings  
 2 and the timing of their submissions, except to require that a party seeking an award of attorney's  
 3 fees submit its application within 30 days of final judgment. 28 U.S.C. § 2412((d)(1)(B).

4 The United States Attorney's Office was served with the instant motion on July 27, 2001.  
 5 Having no prior experience with Hyde Amendment claims in this District, we notified the  
 6 Department of Justice and sought guidance concerning the procedures and organizational  
 7 responsibilities, if any, established by the Department for response. We were advised that each  
 8 United States Attorney's Office is responsible for litigating claims arising in its district and that  
 9 it is the national position of the Department of Justice that criminal rules and procedures apply to  
 10 such motions.<sup>1</sup> Accordingly, we filed our initial response on August 3, 2001, within the seven  
 11 days provided by the local criminal rules. (Local Rules CrR 47 and CrR12). Subsequently, we  
 12 received a copy of the response filed on behalf of co-defendant Powell and the reply filed by  
 13 defendant Anderson's attorney. It has been our experience in criminal cases in this District that  
 14 the parties, both defense and prosecution, frequently file supplemental pleadings with respect to  
 15 pending, undecided motions, and the Court routinely considers such supplemental pleadings and  
 16 any responses thereto.<sup>2</sup>

17 In reviewing defendant's motion, and his reply pleading, it became evident to us that if  
 18 the Court is required to resolve the many factual issues posed by defendant's motion, vast  
 19 amounts of scarce prosecutorial and agency resources will have to be expended in refuting  
 20 defendant's myriad factual claims and assertions made in support of his motion, and a very  
 21 significant commitment of judicial time would be required in order to determine the truthfulness  
 22 and accuracy of defendant's many claims. Because we believe that the governing law, when  
 23 applied to a few uncontested and indeed, incontestable facts, allows the Court correctly to  
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25 <sup>1</sup> The courts have heretofore considered the applicability of criminal vs. civil rules with  
 26 respect to Hyde Amendment claims, only in the context of the timing for filing an appeal under  
 27 the Federal Rules of Appellate Procedure. E.g., *compare, United States v. Robbins*, 179 F.3d  
 1268, 1270 (10th Cir. 1999) (criminal rule applies) with *United States v. Truesdale*, 211 F.3d  
 898, 902 (5th Cir. 2000) (civil rule applies).

28 <sup>2</sup> While local rule CrR 12 does not specifically authorize supplemental pleadings, neither  
 does it forbid them.

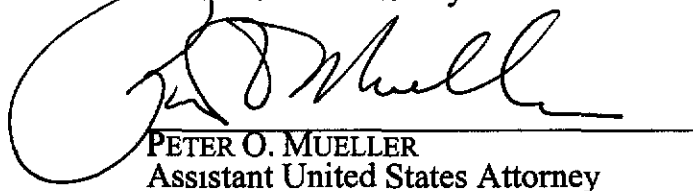
1 resolve this motion without such major expenditure of resources, we filed our supplemental brief  
 2 to present that position for the Court's consideration. We, of course, have no objection to, and  
 3 indeed welcome, a response from the defendant to the merits of our position set forth in our  
 4 supplemental brief. We believe that proceeding in such manner will substantially narrow the  
 5 issues for the Court's consideration, and help bring about a speedy and efficient resolution of the  
 6 motion. If the Court believes that the filing of the Supplemental Response offended the  
 7 procedural rules cited by the defendant, then we respectfully seek the Court's permission, nunc  
 8 pro tunc, to permit it to be filed and considered after an appropriate opportunity for the  
 9 defendant to respond.<sup>3</sup>

10 For the foregoing reasons, defendant Anderson's Motion to Strike the government's  
 11 Supplemental Response, should be denied.

12 DATED this 18th Day of September, 2001

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 14  
 15 Respectfully submitted,

16 FRANCIS J. DISKIN  
 17 United States Attorney

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 19 PETER O. MUELLER  
 20 Assistant United States Attorney

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 28 <sup>3</sup> Since the defendant flatly asserts there is "no substance" to the government's position as  
 stated in its Supplemental Response, it is hard to understand why he mounts such a vigorous  
 procedural attack in an effort to prevent the Court from considering the Supplemental Response.